IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4962 OF 2005

Kamal Dattatraj Giri ...Petitioner
vs.
Nehru Nagar Samrat Co-op
Housing Soc. Ltd ....Respondents

N.S. Vaidya for the petitioner.
Mr. A.A. Khumbakoni with Mrs. Ranjana Parikh for the respondents.

CORAM: S.U. KAMDAR, J.

DATE : 25th November, 2005.

P.C. :

1. Learned counsel for the petitioner has challenged the inter-locutory order passed by the Co-operative Court. The Trial court as well as the Co-operative Appellate Court have given a concurrent finding that in the interest of the reconstruction project which has been undertaken for all the flat occupiers of the building it is necessary that the petitioner should be evicted

from the premises.

2. There are 20 flats in the building in Nehru Nagar Samrat Co-operative Housing Society. The building is in a dilapidated condition and requires reconstruction. 19 of the 20 members have agreed to the said reconstruction project and have infact vacated the flat premises. It is only the petitioner who is occupying the flat on ground floor of 330 sq.ft is refusing to vacate and bringing a halt to the project. Learned counsel for the respondent has stated that not only the petitioner has been given alternate accommodation for the time being but has been given a flat in the newly constructed building of 550 sq.ft on the first floor of the building. Inspite of the same the petitioner is obstructing reconstruction of the project. In the present case the balance of convenience is that the project must go through and the building must be constructed since 19 of the 20 flat purchasers have vacated and are residing in alternate accommodation. It is not possible to interfere

with the order passed by the trial court and confirmed by the appeal court. In view thereof I direct the respondent that when the reconstruction is completed an accommodation will be given to the petitioner on the first floor of 550 sq.ft in new building. The learned counsel for the respondent has contended that the builder has already given an undertaking to that effect in the trial court. However during the course of the hearing of the petition I offered the petitioner to accept the aforesaid offer of the builder but the petitioner is not willing to vacate the premises at all and is making certain demands which are not possible to be accepted. In that view of the matter, petition fails. Petition dismissed off accordingly. No order as to costs.

sd/-

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